* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 875 of 2006**

% Judgment reserved on: 1st March, 2007

Judgment delivered on: 13th March, 2007

COMMISSIONER OF INCOME TAX
Delhi (Central)-II
ARA Centre, E-2,
Jhandewalan Extn.
New Delhi ..... Appellant
Through:Mr.R.D.Jolly, Adv.

Vs.

SHRI ANIL KUMAR
222, Nangli Sakrawati
Najafgarh Road,
Delhi ..... Respondent
Through:Mr.K.R.Manjani, Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

**V.B. GUPTA, J.**

Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (for short as 'Act') against the

order dated 23rd September, 2005 passed in ITA No.2468/Delhi/2002 for the assessment year 1995-96.

2. We have framed the following substantial question of law for consideration:-

> "Whether the Income Tax Appellate Tribunal was correct in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs.20 lacs on account of gifts alleged to have been received by the Assessee?"

3. Brief facts of the case are that the Assessee in the present case filed the Income Tax Return for the assessment year 1995-96 on 31st October, 1995 declaring an income of Rs.1,04,249/-. This assessment was made under Section 143(3) of the Act on 2nd March, 1998 accepting the declared income of the Assessee. Subsequently, this assessment order was examined by CIT(Central-2), New Delhi under Section 263 of the Act who set aside the assessment on 2nd August, 1999 with direction to examine the identity, genuineness and creditworthiness of two donors.

4. The Assessee filed a written reply on 5th November, 2001 but the Assessing Officer wanted further details as well as the attendance of the Assessee. The Assessee did

not appear and sought adjournments. After giving sufficient opportunities, the Assessing Officer completed the assessment under Section 144 of the Act. The Assessee neither appeared personally nor furnished the requisite information to the Assessing Officer and accordingly, Assessing Officer completed the assessment on merits. The Assessing Officer observed that the Assessee had received two gifts of Rs.10 lacs each from N.R.E. accounts of two donors namely Sh.Vinod Kumar Ghai and Sh.David Paramjit Gill. The Assessing Officer observed that the Assessee had filed no evidence to prove the capacity of the donors for giving these substantial gifts, though the Assessee in his reply dated 5th November, 2001 had stated that he has also submitted form of Gift Deeds, affidavits of two donors, passport of two donors as well as bank certificates relating to these gifts by means of A/C Payee cheques from NRE accounts from these two donors. However, the Assessing Officer was not satisfied with the reply of the Assessee and observed that the Assessee could not discharge his onus of proving the creditworthiness of the donors and held that the amount of Rs.20 lacs which

has been declared by the Assessee as gift, was in fact his income and same was added to his total income under Section 68 of the Act.

5. Aggrieved by the order of the Assessing Officer, the Assessee filed an appeal before the Commissioner of the Income Tax (Appeals) who held that these two gifts made are genuine and as such the addition made was deleted.

6. Being dissatisfied with the orders of the Commissioner of Income Tax (Appeals), Revenue filed appeal before the Income Tax Appellate Tribunal and vide impugned order the appeal of the Revenue was dismissed.

7. It has been argued by the learned counsel for the Revenue that the Assessee failed to furnish financial capacity and creditworthiness of the donors and there was no natural love and affection between the Assessee and the donors. The Assessee did not appear before the Assessing Officer nor he furnished the requisite information and thus, the Assessee has failed to discharge its onus and in support of his contention, the learned counsel cited a decision of our own High Court reported as ***Sajan Dass and Sons vs. Commissioner of Income Tax*** (2003) 264 ITR 435.

8. On the other hand, it has been argued by learned counsel for the Assessee that the Assessee duly declared these two gifts in his capital account at the time of original assessment and he submitted necessary evidence in the form of gift deeds, affidavits of donors, copies of the passport of the two donors and bank certificate confirming the payment by pay order from the NRE accounts of the two donors and in support of his contention, learned counsel cited two decisions of our own High Court, ***Commissioner of Income Tax vs. Sunita Vachani*** *(*1990) 184 ITR 121 and ***Commissioner of Income Tax vs.R.S.Sibal*** (2004) 269 ITR 429.

9. The question to be seen here is as to whether the identity of donors has been established and whether they had the capacity to make such a gift or not. In Commissioner of Income Tax vs.R.S.Sibbal (supra), it has been laid down:

> " There is no quarrel with the preposition that a mere identification of the donor and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift and since the claim of a gift is made by the assessee the onus lies on him not

> only to establish the identity of the donor but his capacity to make such a gift. But, in the instant case, we find that though the assessee had admittedly produced the bank statements, the Assessing Officer did not raise any query with regard to the capacity of the donors to make the gift. From the assessment order, we find that the only ground on which the genuineness of the gifts has been doubted is the alleged failure on the part of the assessee to establish relationship between the donor and the donee"

10. Similarly in Sajan Dass and Sons (supra), it has been laid down that:

> "A mere identification of the donor and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift. Since the claim of gift is made by the assessee, the onus lies on him not only to establish the identity of the person making the gift but also his capacity to make a gift and that it has actually been received as a gift from the donor. Having regard to the inquiries conducted by the Assessing Officer from the bank, with which the assessee was admittedly confronted and bearing in mind the fact that admittedly said Subhash Sethi was not related to the assessee, we are of the view that the findings recorded by the Tribunal are pure findings of fact warranting no interference. We find it difficult to hold that on the facts of the instant case proper opportunity had not been granted to the assessee to prove the gift."

11. So, from the aforesaid judgments, the position which

emerges is as under:-

(i) Mere identification of donor and showing the movement of gift amount through banking channels is not sufficient to prove the genuineness of the gift.

(ii) Since the claim of the gift is made by the Assessee, the onus lies on him not only to establish the identity of the person making the gift but also his capacity to make such a gift.

12. Here in the present case, there is nothing on record to show as to what was the financial capacity of the donors; what was the creditworthiness of the donors; what kind of relationship the donors had with the Assessee; what are the sources of funds gifted to the Assessee and whether they had the capacity of giving large amount of gift to the Assessee. Further, the Assessee was asked to appear in person before the Assessing Officer, however, he never appeared.

13. Since, the Assessee did not prove the genuineness of the transaction nor he established the identity of the donor,

nor the capacity of donor to make gift, as such the Income Tax Appellate Tribunal was wrong in deleting the addition of Rs.20 lacs on account of gift alleged to have been received by the Assessee.

14. Accordingly, the present appeal filed by the Revenue is accepted and impugned order passed by the Income Tax Appellate Tribunal is set aside.

15. The substantial question of law is answered in the negative, in favour of the Revenue and against the Assessee.

**(V. B. GUPTA)**
**JUDGE**

**March 13, 2007**
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**(MADAN B. LOKUR)**
**JUDGE**